

In re) Fair Hearing No. 10,454
)
Appeal of)

The petitioner appeals the Department's determination to terminate her ANFC benefits due to the receipt of a lump sum insurance settlement.

1. The petitioner lives with her child and the child's father, J.L., who had a disabling accident on May 26, 1990. They receive ANFC benefits based on his incapacity.

3. Shortly after October 30, 1990, J.L. received an insurance settlement of \$14,642.58. The receipt of that amount was not reported by the petitioner in the ten day period.

4. On November 8, 1990, the petitioner's worker received notification from the Medicaid Division that a settlement payment had been made to it on behalf of J.L. On November 9, 1990, the worker sent a letter to the petitioner asking her to verify the amount of the settlement J.L. had received by November 20, 1990 or face closure of her case.

5. The petitioner did not provide the information requested but spoke to her worker by telephone on November 20, 1990. At that time she told her worker that she had no evidence of the amount received because the bank had kept the check stub when it was cashed. She also told the worker that she had spent all or nearly all of the money. The worker told the petitioner to get together her bank book, statements and receipts and made an appointment to go over them on November 29, 1990.

6. The petitioner did not show up for the November 29 meeting and did not call to explain her absence although she testified later that she had transportation problems. On that day, the worker sent her a letter requesting proof of the amount received from settlement of the accident and verification of where the money had gone by December 12, 1990, or her benefits would be terminated by December 31, 1990. She also rescheduled the petitioner for an interview on December 6, 1990, and warned that failure to show up would be considered non-cooperation.

7. The petitioner came to the December 6 meeting but still had no verification of the amount of the settlement.

She brought receipts showing that two vehicles had been purchased and over \$5,000.00 was spent on furniture and other items out of the settlement money. The worker tried to figure the amount of the settlement from adding up the expenditures but could not arrive at a figure. Following the meeting, the worker handed the petitioner a written request for verification of the settlement amount and the date it was received by December 17, 1990, or her case would be closed. The worker also reminded the petitioner that J.L.'s medical disability review letter was overdue and discussed his failure to attend scheduled medical appointments.

8. After the due date came and went, with no information offered, the Department notified the petitioner that her case would close due to non-cooperation. The petitioner appealed and obtained an attorney who was able to settle the matter by getting the requested verifications and medical reports.

9. On March 28, 1991, after reviewing the verification of the \$14,642.58 payment and the medical reports, the Department notified the petitioner that her ANFC of \$564.00 per month would be closed effective April 15, 1990, and that the family would not be eligible again before March of 1992, due to the receipt of the lump sum. The next day she was also notified that based on the lump sum, she had been overpaid since November of 1990, in the amount of \$3,383.00 which she was informed could be repaid

immediately or recouped gradually from her benefits. At the same time, the petitioner was notified by a separate letter that the Department had determined based on recent medical evidence that J.L. was no longer incapacitated and, therefore, the children were no longer deprived of parental support and the family was thus ineligible for ANFC.

10. The petitioner did not contest the termination due to the finding of no incapacity but appealed the sixteen month disqualification due to the receipt of the lump sum payment. The petitioner alleges that she spoke with her worker at some point (she variously testified to July, September, and mid-October) regarding the potential receipt of the insurance settlement and was allegedly told by her worker that the receipt would not affect her benefits if all the money were spent on things which wouldn't become a resource. She also testified that she understood the need to report changes but felt that the Department already knew from the Medicaid division that she had received a settlement. She also said she mistakenly believed she had 30 days to make such a report. She testified that she did not learn until the March 28 notice of the disqualifying effect of the lump sum although she also testified that she had spoken with a legal aid attorney as early as December of 1990 about the problem and had also been told during a January 1990 phone call to the Department by a substitute worker about the real effect of a lump sum payment. The petitioner also testified that as late as March, 1991, she

believed, based on her conversation with "someone" at the Department, that in spite of everything she would still be eligible for ANFC because she is pregnant. The petitioner admitted, however, that she has a poor memory and that she had not been good about keeping her worker informed as to her various problems with providing information.

11. The worker testified that she does not recall ever having a conversation or communication of any kind with the petitioner regarding the treatment of the insurance settlement payment prior to November 9, 1990. In fact, she testified that prior to that date, she had only spoken with the petitioner after her initial eligibility at the August 6 review at which the settlement was never mentioned. However, her testimony was that if she had been asked about the settlement, she would not have given the advice testified to by the petitioner because that summer she had handled another lump sum case and under the tutelage of her supervisor, had already thoroughly studied and familiarized herself with the lump sum regulations before she met with the petitioner in August.

12. The evidence given by the petitioner and the worker are in direct conflict on the issue of what information the worker gave to the petitioner. Because the petitioner had such a poor and contradictory memory with regard to these (and many other) facts in contrast with the worker's memory, which was consistent, logical and supported by notes and documents, the worker's version of events found

in paragraph 11 appears to be more accurate and is adopted herein as fact. Although the petitioner may have been confused about reporting on using J.L.'s insurance settlement, that confusion cannot be attributed to any action or inaction on the part of the worker who appears to have been fair, accurate, and conscientious in dealing with the petitioner.

ORDER

The Department's decision is affirmed.

REASONS

When an individual receives a lump-sum payment, her household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is found at W.A.M. § 2245.2) into the total amount of the lump sum. W.A.M. § 2250.1 The petitioner does not argue that the insurance settlement she received is not a lump-sum payment. See W.A.M. § 2250.1 Neither does she assert that the calculation of her period of disqualification is inaccurate or should be reduced. Rather, she argues that the Department should be estopped from applying the lump-sum rule against her or in the alternative the lump-sum should be found to be unavailable to her for reasons beyond her control.

The Board has held in Fair Hearings No. 9273 and 10,010 that estoppel against the Department (a government agency) is an unusual remedy which will only apply when the

petitioner has shown that she meets all of the elements for estoppel set out by the Vermont Supreme Court in Fisher v. Poole, 142 Vt. 162 (1982), and shows that a great injustice will result which outweighs the Department's need to carry out its policies. See Burlington Fire Fighters Association, et al v. City of Burlington, 149 Vt. 293 (1988).

The elements of estoppel must be established by the person invoking the doctrine and require:

First, the party to be estopped must know the facts; second, the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; third, the latter must be ignorant of the true facts; and finally, the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment. Fisher, supra at 168.

The petitioner asserts that the Department knew or should have known that she was getting a lump-sum insurance settlement payment; that the Department gave her incorrect information which it had every reason to believe she would act upon; that the petitioner was ignorant of the true effect of the lump-sum on her eligibility; and that the petitioner, relying on the incorrect information, spent all the money to her detriment.

The facts in this matter, however, do not support the petitioner's argument. There is no reason that the Department knew or should have known anything about the insurance settlement as the credible evidence indicates that the petitioner never made any attempt to inform the Department whatsoever about the lump sum. In fact, it would

not be unfair to conclude based on the evidence that the petitioner's actions either intentionally or unintentionally, concealed the relevant facts from the Department.

Neither can it be concluded that the Department gave the petitioner erroneous information about the effect receipt of the lump sum would have on her benefits. The more credible evidence shows that the Department, in fact, told the petitioner to report the receipt of the lump sum immediately and said nothing to her about how it might be treated when it was reported. The facts in this case do not support the imposition of estoppel against the Department.

The petitioner argues in the alternative that the lump sum income she received has "become unavailable to her family for circumstances beyond her control" and that, pursuant to W.A.M. § 2250.1, her period of ineligibility should be removed. She argues that her lack of knowledge of the true effect of the lump sum rule prevented her from preserving her assets to use towards living expenses and that as she has spent the entire original lump sum, none of it is any longer available to meet her family's monthly needs.

The petitioner's argument is again unsupported by the evidence. First, the petitioner has presented no evidence that she cannot reasonably recover all or part of the lump sum she spent. Although she put on virtually no evidence of what her expenditures were, the Department's witness

indicated, without contradiction, that a goodly portion of the settlement was spent on two cars. There was no evidence presented as to why those cars or anything else that might have been purchased could not or should not be reconverted to cash. Second, for the same reason as discussed under the estoppel argument above, it cannot be found that the petitioner had no control over the situation, i.e., had no opportunity to learn information which would assist her in making an informed choice on how to use her money. In fact, had the petitioner reported the receipt of the money immediately, as the evidence indicated she should have clearly understood she was obligated to do, (See W.A.M. 2220), she would have had the opportunity to learn exactly how the Department would treat the income and what exclusions and exceptions might be available to her. The petitioner's problems were well within her control and arose rather from her avoidance of contact with the Department than any mal- or misfeasance on the Department's part.

It is possible that the petitioner actually made individual expenditures which meet the above standard for exclusion. If she did, she should present that information to the Department to see if she is eligible for a recalculation of the disqualification period. It cannot, however, be found based on the above evidence that the disqualification period, in general, should not be imposed.

FOOTNOTES

¹Although the family is, therefore, no longer presently

eligible for ANFC, the matter is not moot because of the overpayment finding and the future disqualification period which would prevent the family from applying for ANFC until March of 1992, if its circumstances should change.

#